

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3066 OF 2006
ALONGWITH
WRIT PETITION NO.3065 OF 2006

Chandrakant Tukaram Bharekar ...Petitioner
(In both the Petitions)

Versus

Damu Sitaram Nanaware & Ors. ...Respondents
(In both the Petitions)

Shri R.N.Sanghavi for the Petitioner in both the
Petitions.
Shri Mandar Limaye for the Respondent Nos.1 to 9 in both
the Petitions.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 26, 2007.

P.C.:

1. Heard learned counsel appearing for the parties.
In Writ Petition No.3066 of 2006 the challenge is to the
order dated 23rd November, 2004 passed by the trial
Court. The Writ Petition has been filed on 28th March,
2006. In Writ Petition No.3065 of 2006, the challenge
is to the order passed on 11th July, 2003.

2. For dealing with an objection regarding delay
and latches in filing these Petitions raised by the
contesting Respondents, an affidavit have has been filed
by the Petitioner No. 1 in Writ Petition No.3066 of
2006. In the said affidavit it is stated that the
Petitioner No.1 was suffering from acute and chronic

ploy arthralgia due to SSA from 10th August, 2003 to 12th December, 2005. It is stated that due to illness he could not meet the Advocate and give instructions. There is another affidavit filed by Smt Shailaja Ghaokar who is the Petitioner No.2 in Writ Petition No.3065 of 2006. It is stated in the affidavit that her husband Chandrakant was bedridden from 10th August, 2003 to 12th December, 2005. She has stated that she was not able to take any steps in the matter as she is illiterate and she had to look after her husband.

3. The orders impugned in both the Petitions are not final orders and the suit is still pending. In the Writ Petitions there is no explanation whatsoever for delay in approaching this Court. The explanation has come in the form of additional affidavits. Certain medical certificates are produced across Bar for my perusal.

4. I find that it is not possible to accept the case made out by the Petitioners that the illness prevented filing of the Writ Petitions within a reasonable time. Considering the nature of the impugned orders no interference can be made at this stage in the Petitions under Article 227 of the Constitution of India. It is, however, made clear that in case the

decree passed in the suit is adverse to the Petitioners, they will be entitled to challenge the impugned orders while preferring the Appeal against the decree.

5. In so far as valuation of the suit for court fees and jurisdiction is concerned, it is always open for the trial Court at an appropriate stage to pass appropriate order in case the trial Court finds that the suit is not properly valued.

6. Subject to what is stated above, Writ Petitions are rejected. All contentions on merits of the pending suit are kept open.

JUDGE